

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
MCC Georgia LLC)	
)	CSR-6005-E
Petition for Determination of Effective)	
Competition in the City of Americus, Georgia,)	
(GA0069))	
)	

MEMORANDUM OPINION AND ORDER

Adopted: July 11, 2003

Released: July 16, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. MCC Georgia LLC ("Mediacom") has filed with the Commission a petition pursuant to Section 76.7 of the Commission's rules for a determination of effective competition in the City of Americus, Georgia ("Americus").¹ Mediacom alleges that its cable system serving Americus is subject to effective competition pursuant to Section 623(a) of the Communications Act of 1934, as amended ("Communications Act"), and Section 76.905(b)(2) of the Commission's rules, and seeks revocation of the certification of the local franchising authority in Americus to regulate basic cable service rates.² Mediacom claims the presence of effective competition in Americus stems from the competing services provided by two direct broadcast satellite ("DBS") providers, DirecTV, Inc. and EchoStar Communications Corporation ("EchoStar"). No opposition to the petition was filed.

II. DISCUSSION

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 76.905 of the Commission's rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area. Based on the record in this proceeding, Mediacom has met this burden.

¹ 47 C.F.R. § 76.7.

² 47 U.S.C. § 543(a); 47 C.F.R. § 76.905(b)(2).

³ 47 C.F.R. § 76.906.

⁴ 47 C.F.R. § 76.905.

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors ("MVPD") each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds fifteen percent of the households in the franchise area.⁵

4. Turning to the first prong of the competing provider test, DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in a franchise area are made reasonably aware that the service is available.⁶ Mediacom has provided evidence of the advertising of DBS service in news media serving Americus.⁷ We find that the programming of the DBS providers satisfies the Commission's program comparability criterion because the DBS providers offer more than 12 channels of video programming, including more than one non-broadcast channel.⁸ Mediacom has demonstrated that Americus is served by at least two unaffiliated MVPDs, namely the two DBS providers, each of which offers comparable video programming to at least 50 percent of the households in the franchise area. Mediacom has also demonstrated that the two DBS providers are physically able to offer MVPD service to subscribers in Americus, that there exists no regulatory, technical, or other impediments to households within Americus taking the services of the DBS providers, and that potential subscribers in Americus have been made reasonably aware of the MVPD services of DirecTV and EchoStar.⁹ Therefore, the first prong of the competing provider test is satisfied.

5. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Mediacom sought to determine the competing provider penetration in its franchise area by purchasing a report from SkyTrends that identified the number of subscribers attributable to the DBS providers within Americus on a franchise-specific zip code plus four basis.¹⁰ Mediacom asserts that it is the largest MVPD in Americus because Mediacom's subscribership exceeds the aggregate DBS subscribership for the franchise area.¹¹ Based upon the 15.28 percent aggregate DBS subscriber penetration level, calculated using 2000 Census household data,¹² we find that Mediacom has

⁵ 47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁶ *See MediaOne of Georgia*, 12 FCC Rcd 19406 (1997).

⁷ Petition at 4 and Exhibit A; *see also* Letter from Bruce Gluckman, Vice President of Legal & Regulatory Affairs, Mediacom, to Steven A. Broecker, Deputy Chief, Policy Division, Media Bureau, FCC at Exhibit A (Jan. 31, 2003).

⁸ *See* 47 C.F.R. § 76.905(g); *see also* Petition at 4-5 and Exhibits B-D. Exhibits B and C contain the nationwide channel lineups of EchoStar and DirecTV and Exhibit D includes the channel line-up for Mediacom's cable system serving Americus.

⁹ Petition at 2-5.

¹⁰ *Id.* at 6.

¹¹ *Id.* at 6 and Exhibit E.

¹² MediaCom amended its petition regarding certain data relating to the second prong of the competing provider test because of what it states are typographical errors in the petition. *See* Petition at 6. MediaCom states that the number of Census 2000 households in Americus is 6,374 as reflected in Exhibit G to the Petition. MediaCom also states that the direct-to-home ("DTH") satellite providers' subscriber count for Americus is 974 and the DTH penetration is 15.28% as reflected in Exhibit F to the Petition (974 DBS subscribers ÷ 6,374 Americus 2000 Census

(continued...)

demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in Americus. Therefore, the second prong of the competing provider test is satisfied. Based on the foregoing, we conclude that Mediacom has submitted sufficient evidence demonstrating that its cable system serving Americus is subject to effective competition.

III. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that the petition filed by MCC Georgia LLC for a determination of effective competition in the City of Americus, Georgia **IS GRANTED**.

7. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service of the City of Americus, Georgia **IS REVOKED**.

8. This action is taken pursuant to authority delegated under Section 0.283 of the Commission's rules.¹³

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Deputy Chief, Policy Division, Media Bureau

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Households = 15.28%). See Letter from Bruce Gluckman, Vice President of Legal & Regulatory Affairs, MediaCom, to Steven A. Broecker, Deputy Chief, Policy Division, Media Bureau, FCC at 1 (Jan. 31, 2003).

¹³ 47 C.F.R. § 0.283.